EMPLOYMENT TRIBUNALS

Claimant: **Mr Shahid Ali**

Respondent: **Jamiyat Tabligh-ul-Islam**

Heard at: **Leeds**
On: **5-8 and (deliberations only) 9 August 2024**

Before: **Employment Judge Maidment**
Members: **Mr N Pearse**
Mr M Taj

Representation
Claimant: **In person**
Respondent: **Mr S Anderson, Counsel**

RESERVED JUDGMENT

1. The claimant's complaint of ordinary unfair dismissal is well founded and succeeds. Any basic and compensatory award will fall to be reduced by 50 per cent to reflect the claimant's conduct prior to dismissal.

2. The claimant's complaints of automatic unfair dismissal and detrimental treatment because of him having made protected disclosures fail and are dismissed.

3. The claimant's complaint of direct discrimination because of religious belief fails and is dismissed.

4. The case will be listed for a remedy hearing with a time estimate of 1 day.

REASONS

Issues

1. The claimant brings a complaint of ordinary unfair dismissal where the respondent relies upon the claimant's conduct as a potentially fair reason for dismissal. He also maintains that his dismissal was automatically unfair

because the reason, or if more than one, the principal reason, for his dismissal was his having made qualifying protected disclosures, i.e. whistleblowing.

2. The claimant relies on the following disclosures:

   2.1. in July 2021 in a private meeting with one of the trustees, Liaqat Hussain, the claimant said that a speaker the respondent was planning to host gave sermons and had made statements in breach of Sunni teachings
   2.2. in July 2021 in a meeting with Ahsan Shah (a trustee) at his house the claimant said that a speaker the respondent was planning to host gave sermons and had made statements in breach of Sunni teachings
   2.3. on 13 November 2022 at a meeting of the youth in the respondent's organisation, the claimant said that a speaker the respondent was planning to host gave sermons and had made statements in breach of Sunni teachings. Ahsan Shah, a trustee, hosted the meeting and was in attendance
   2.4. on 29 January 2023 the claimant raised the same concerns in a message to Liaqat Hussain, Ahsan Shah and Khadim Hussain.
   2.5. on Friday 3 February 2023 the claimant said to his congregation that a speaker the respondent was planning to host gave sermons and had made statements in breach of Sunni teachings
   2.6. on 5 February 2023 at a public protest the claimant said that a speaker the respondent was planning to host gave sermons and had made statements in breach of Sunni teachings. Khadim Hussain, a trustee, was in attendance

3. The claimant also relies on the same disclosures in a complaint of detrimental treatment on the ground that he made a protected disclosure. The acts of detriment complained of are, firstly, his suspension and, secondly, the respondent's unreasonable delay in conducting the disciplinary proceedings.

4. Finally, the claimant brings a complaint of direct religious belief discrimination. His religious belief is Sunni Islam. The less favourable treatment said to be because of religious belief is his suspension, the respondent's unreasonable delay in conducting the disciplinary proceedings and his dismissal.

Evidence and preliminary issues

5. The tribunal had before it an agreed bundle of documents numbering 285 pages. The claimant produced some additional documentation after all the witness evidence had been heard, but immediately before submissions. Mr Anderson did not object to them being considered by the tribunal. They evidenced occasions when the claimant had brought to the trustees' attention the teachings of a guest speaker whom the claimant maintained diverged from the Sunni tradition of Islam.

6. Having identified the issues with the parties, the tribunal took time to privately read the witness statement and relevant documents. The tribunal then, on

behalf the respondent, heard from Mr Hamayun Arshad, a HR and health and safety consultant, Mr Liaqat Hussain, trustee and Mr Rafiq Sehgal, president of the Northside mosque. The claimant then gave evidence on his own behalf. The clamant had exchanged witness statements also of a number of witnesses he intended to call on his behalf: Tariq Mahmood, Sajjad Rizvi, Arshad Butt, Najma Kauser, Ayaan Mahmood and Anis Younis. The claimant did not call those witnesses in circumstances where Mr Anderson said that he had no questions of them and where it was understood that such evidence would therefore be accepted and considered by the tribunal.

7. At the commencement of the hearing, Mr Sehgal raised through Mr Anderson that around 30 years ago he had worked as a bus driver in Bradford at the same time as one of the tribunal's non-legal members, Mr Taj. The respondent did not seek to make any application in this regard. Mr Taj volunteered that he had no recollection of Mr Sehgal. Also, whilst a number of the individuals mentioned in the proceedings were well known figures in the Bradford Muslim community, Mr Taj said that he did not know them and had never had any personal or working relationship with any of them. On that basis, the claimant said that he was content to proceed with a tribunal panel which included Mr Taj. However, whilst the tribunal was privately reading into the evidence, the claimant raised by email that he had reconsidered his position and would wish to continue with a panel where Mr Taj was replaced by an alternative non-legal member.

8. The tribunal raised this once the live hearing was reconvened. The tribunal went through the claimant's email which referred to Mr Taj knowing the trustees, having worked with one of the respondent's members and knowing the respondent's founder.

9. The tribunal explained in some detail Mr Taj's summary of his knowledge/relationship with any individuals involved in these proceedings.

10. The claimant had mentioned Mr Taj knowing the respondent's founder and trustee Pir Maroof Hussain. Mr Taj had not said that. He knew of him, from the early 70's as he had a high profile in the Muslim and faith communities and in the local media. He didn't recall ever meeting him or being introduced to him in a professional or personal capacity.

11. As regards the trustee, Liaqat Hussain, he had never met him personally or been introduced to him by anyone in his personal or professional capacity to best of his recollection over a period of 55 years.

12. Mr Taj knew that Khadim Hussain is the claimant's uncle only discovered that when he was reading the witness statement of the investigating officer, Mr Hamayun Arshad (at paragraph 12). Up to this point, he didn't realise, he was also a trustee of the respondent or the claimant's uncle. Mr Hussain had worked as a bus driver in Bradford. Since his retirement from the bus company, in the late 80's to early 90's, Mr Taj had met him on no more than half a dozen

occasions, mainly at bus drivers' funerals at the Victoria Street Masjid. All Mr Taj knew from his work colleagues was that he held some senior position in the management committee of the Vicoria Street Masjid.

13. As regards Rafiq Sehgal, he had a better recollection of when he commenced his employment with the bus company or when he left the bus company's employment. Mr Taj commenced his employment with Bradford City Transport at the age 20 and they probably employed about 1200 bus conductors and drivers. Mr Taj was the elected trade union representative in the Bradford site for over 30 years, from 1978 to 2015. It was impossible for him to be able to recollect names and individuals out of 1200 union members or so. He knew that Mr Rafiq Sehgal became president of the Council of Mosques for a period, but didn't recall the period. Today was the first time he had discovered that he holds a senior position at the Lidget Green mosque.

14. The tribunal referred itself to the authority of **Porter v Magill 2002 2 AC HL** where it was made clear that an employment tribunal must be free from actual or apparent bias. The question to be asked was: would the circumstances lead a fair-minded and informed observer to conclude that there was a real possibility that the tribunal was biased?

15. The respondent said that it had no concerns about actual bias and that the only point it could think of (albeit not one which it considered might give rise to a recusal) was that there was a question as to whether or not Mr Hussain had predetermined the outcome of the claimant's dismissal. Perhaps, because of Mr Hussain's standing in the community, the claimant might feel that Mr Taj had a particular view regarding his integrity. Mr Taj clarified that he had seen Mr Hussain at funerals, as part of a large group of attendees, and recognised him. He had no idea what his reputation is and had not heard anything about him, good or bad. He was simply an individual who was well-known in the Sunni community.

16. The tribunal adjourned and then explained to the parties that the tribunal would continue as the panel of 3 currently constituted. It did not consider in all circumstances the was any basis upon which a fair-minded and informed observer would conclude that there was a real possibility that the tribunal was biased. Mr Taj had had no working or personal relationship with any of the individuals giving evidence or otherwise concerned with this case. He did not know the individuals, but simply knew of them as an inevitable by-product of having lived in the same community. There was no basis for anyone to reasonably conclude that Mr Taj's decision-making might be unduly influenced.

17. Having considered all the relevant evidence, the tribunal made the factual findings set out below.

Facts

18. The respondent, known sometimes as "JTI", is a charity operating a number of mosques and religious schools in West Yorkshire. Its objects include the advancement of the religion of Islam according to the Sunni tradition as defined in a separate statement of faith.

19. The claimant was employed as an imam at the Howarth Road mosque in Bradford. His employment with the respondent had commenced in November 2013.

20. The respondent had previously and continued to invite a scholar known as Irfan Shah as a guest speaker. The claimant believed that this individual held religious views of the Shia tradition of Islam which were in conflict with the respondent's statement of faith.

21. The claimant attended what was termed as a disciplinary meeting on 31 July 2021 (PID 1) where, amongst other things, his alleged criticism through social media (and otherwise) of fellow imams was discussed. The claimant argued that it was his fundamental freedom of expression to disagree and criticise fellow imams. The trustee, Liaqat Hussain, who chaired the meeting, expressed the view that he should discuss points of disagreement in private with the imams before publicly airing criticisms. The claimant referred to him having outlined 21 objections to Irfan Shah's "speech". Mr Hussain said that labelling other imams as "deviants" was disrespectful and inappropriate. No formal disciplinary sanction was issued after this meeting. Nevertheless, the claimant said that he understood that the respondent's wish was for him to keep his disagreements regarding the faith of other imams and Irfan Shah private.

22. The tribunal rejects the claimant's assertion of there was a further public disciplinary hearing on 2 August and finds rather that Mr Hussain attended the Howarth Road mosque as part of reassuring the congregation there about the claimant's reintegration.

23. The claimant had already prior to 31 July 2021 raised concerns about alleged creedal violations by Irfan Shah with Mr Hussain. These included providing links to videos where the claimant's position was that Irfan Shah had nodded his head when a companion of the Prophet had been allegedly slandered. He had also previously listed the 21 creedal violations being levelled at Irfan Shah.

24. The evidence is of there being, in fact, concerns about the claimant having been rude to a member of the mosque's management committee when he was questioned about being late in attending prayers. The claimant accepted before the tribunal that there was such an issue. The claimant had been moved to an alternative mosque for a couple of weeks, but had then returned back to Howarth Road.

25. The claimant maintained that he raised similar concerns about Irfan Shah to another trustee, Ahsan Shah, in July 2021 (PID 2). The claimant said it was stressed by him that the respondent is a Sunni organisation and hence must take action in response to creedal violations by removing Irfan Shah from his position. The claimant's uncontradicted evidence is that Mr Ahsan Shah said that Irfan Shah was no longer accepted by 95% of Sunni scholars in Pakistan. Another scholar, Muhammad Aslam, who had been the claimant's own teacher, expressed the same view to Ahsan Shah at the same meeting.

26. The claimant also relies on a meeting at the Southfield Square mosque on 13 November 2022 (PID 3) which he terms a meeting of "the youth". He says that he raised concerns of a whistleblowing nature during a meeting of some imams and teachers upon the invitation of a fellow imam who was concerned by Irfan's Shah's behaviour. The claimant's uncontested evidence was that the trustee, Ahsan Shah, was present and that the meeting was also attended by congregation members, including youngsters and students. The claimant, in his witness evidence, referred to another imam mentioning the idea of a letter being written to the respondent's trustees to complain about violations of the constitution. He said that others in the meeting highlighted how Irfan Shah's presence damaged the respondent's reputation. The claimant said that Ahsan Shah said that he would release a statement, but no specific statement was subsequently released beyond a generic speech condemning gatherings where the Prophet's companions were insulted.

27. The issue of Irfan Shah appearing (to some) to disrespect the companions had re-arisen recently. The tribunal has been taken to a message from an imam on 2 November 2022 stating that any form of insult or disrespect "towards these blessed personalities are subject to the curse of Allah … and public condemnation." The imam described statements made disrespecting the Prophet's companion as "wholly disheartening and outright condemned." Ayaan Mahmood's evidence to the tribunal does not quote any statements made by the claimant. The witness statement of Anis Younis referred to the claimant stating that he wanted the meeting to stay private. It was initiated by another scholar and the claimant discussed concerns how having Irfan Shah in the mosque would "greatly affect our public". Others, Mr Younis recounted, highlighted that there could actually be a breach of the respondent's constitution.

28. The claimant's evidence was that some of his imam colleagues within the respondent shared his concerns, but he believed they were afraid of speaking up or taking matters further out of fear of losing their jobs.

29. Clearly, the trustees learned in January 2023 that a poster was being shared inviting people to attend a protest to remove Irfan Shah. The claimant was asked by text if he was involved in this. He replied on 29 January: "I haven't made this poster but have advised you previously regarding Irfan Shah. He is promoting Shi'ah beliefs now even in the central Masjid whereas we are a Sunni

organisation and cannot allow this as it goes against the Jamiyat constitution. Also the public has funded the Jamiyat for the promotion of Sunni Barelwi teachings and understandably the public is now disillusioned with the Jamiyat management. As a result, the 60 year legacy of Jamiyat is being tarnished because Irfan Shah has not been removed." (PID 4)

30. On 3 February 2023, the claimant delivered a sermon (PID 5) at Friday prayers condemning Irfan Shah for violating traditional Sunni teachings and alleging a breach of the respondent's constitution in allowing him to promote what the claimant regarded as blasphemy. He referred to a complete list of 21 other purportedly clear violations by Irfan Shah in a legal edict originating in India. He referred to this as a formal complaint to the trustees stating that the issues were of huge concern for Sunni scholars and the Sunni public alike. He demanded immediate action from the trustees to release a public statement giving a reassurance that Irfan Shah would not be given any platform by the respondent in line with its constitution. The claimant encouraged members of the congregation to attend a demonstration on Sunday 5 February in opposition to Irfan Shah. The claimant's sermon was filmed and distributed through his own YouTube channel.

31. The claimant also attended and delivered the same statement at the aforementioned demonstration outside of the Westgate mosque on 5 February (PID 6). The poster issued in advance of this demonstration had the strapline "Irfan Shah out" underneath a picture of him besides a separate picture of Mr Liaqat Hussain. It was stated that the respondent was a Sunni charity and must only have Sunni imams and speakers. The claimant was, as described, aware of the poster, but it is not the respondent's case that he was responsible for its creation or for himself organising the protest.

32. The claimant, in cross-examination accepted that, in his sermon and at the demonstration, he was not communicating with his employer, but rather in a way which he thought would send a message to his employer and so that his concerns would reach his employer and the wider public. He said that he felt he had exhausted all avenues in trying to get answers in response to his assertion of creedal violations on the part of Irfan Shah. He believed that he had given the respondent persuasive references as to how Irfan Shah's speech conflicted with the Sunni creed.

33. He said that until 3 February he had not expressed his views about Irfan Shah publicly, though then relied on there being a public element to the meeting of the youth in November 2022.

34. Footage of the protest later appeared on YouTube. The respondent maintains that around 20 – 30 people attended, but the claimant puts the estimate higher at around 100 people. The respondent was concerned about the possibility of violence or unrest and had engaged a security company to be present to protect, if necessary, those in separate attendance within the mosque itself. It

had also alerted the police to the fact that the protest was taking place. There is no dispute that there was in fact no violent or criminal activity.

35. In the claimant's speech he had used the Punjabi phrase "banday dey puttar bano" which has the literal translation in English of the "be sons of human beings". He had also used the phrase "sidda kam karrow" which translates as "do the right thing".

36. The trustees of the respondent were made aware of the claimant's sermon and his speech at the demonstration. Mr Khadim Hussain, one of the trustees (and the claimant's uncle, who did not agree with the claimant's position), was in the area of the demonstration as it was taking place. The trustees determined that the claimant ought to be suspended from his role. Mr Liaqat Hussain wrote to him on 6 February 2023 notifying him of his suspension with immediate effect. He stated: "The complaints concerned that you have made several alleged slanderous remarks, accusations made against another individual, which brings into disrepute your position as imam and the JTI. Our attention has also been drawn to your videos on social media containing the same. Furthermore, on 5 February 2023 you are alleged to have repeated the same slanderous accusations during a protest on JTI premises (for which JTI had not given you any permission)." He was told that an investigation would be carried out into the allegations.

37. The claimant agreed in cross-examination that his suspension was because of his actions on 3 and 5 February. He agreed that because he had not been publicly vocal there was no objection from the respondent until 3 February but said that other imams had voiced their issues at the meeting of youth in November 2022 and nothing had happened to them. He agreed that they had not spoken to the public in opposition to their employer or taken part in a demonstration, but he said that they had said that the respondent was breaching the Sunni creed and its own constitution. He also agreed that his length of suspension may have been affected by the absence on pilgrimage of a number of trustees, though he still believed he should have been kept informed.

38. Ahsan Shah issued a communication on 8 February clarifying that the respondent did not support or condone any statements or ideologies that were contrary to its constitution. He wished to give a reassurance that they were taking necessary steps to ensure that its scholars, trustees and board members continued to adhere to the respondent's values and mission as declared within its constitution. He expressed regret at any confusion or harm that may have been caused. He said that he would be leading Friday prayers at the central mosque for the foreseeable future. Mr Ahsan Shah contacted the claimant to ask him to pass on the administrative rights of the Howarth Road mosque's Facebook site.

39. The claimant received no communication from the respondent for some time and Mr Hussain blocked his WhatsApp messages. The trustees were then absent from around the middle of February for around 3 weeks attending the pilgrimage in Saudi Arabia with members of the various mosque congregations. On their return there was time spent in an attempt to negotiate a form of settlement agreement which would have resulted in the claimant leaving the respondent's employment. No agreement was reached.

40. It is clear that a degree of lobbying on the claimant's behalf took place with a view to finding a way of him returning to the Howarth Road mosque or an alternative site. Tariq Mahmood and Arshad Butt telephoned Mr Hussain on 16 March. Their evidence was that Mr Hussain said that the claimant would never come back to the Howarth Road mosque. However, he might be able to work at another mosque if he kept quiet and followed instructions. The claimant's sister, Najma Kauser, said that her uncle who was also a trustee had said on 5 March that Mr Hussain would not agree for him to return to his mosque, but that he might be able to go to an alternative mosque. Mr Hussain denied making such comments, but the evidence to the contrary is preferred including with reference to what the claimant was told during the investigation, as referred to below.

41. Mr Arshad, who operates a HR and health and safety consultancy, was contacted by Mr Hussain in March 2023 with a request to investigate allegations made against the claimant. He was told that the allegations were that the claimant had fundamentally breached trust and confidence by engaging in various actions to remove a guest speaker and alleging that the trustees of the respondent were violating creedal requirements of the organisation. Mr Arshad described that Mr Hussain gave him an overview of what was alleged and left him to present his views on how to proceed. Mr Hussain had said to him that the trustees' consideration was that the mosque had been used inappropriately for the promotion of hate speech, that the claimant had spoken against a fellow speaker and that he had acted inappropriately in his social media posts and involvement in the protest. Mr Arshad understood that the claimant was alleged to have been calling Irfan Shah a Shia and stating that the respondent hosting him was a creedal violation. Mr Arshad was not asked to look at any expression of opinion by the claimant prior to the 3 February 2023 sermon. He understood the allegations to relate to the sermon and telling people to protest as well as the claimant's subsequent involvement in protest.

42. No written terms of reference were provided and no written report requested from Mr Arshad. He spoke to another trustee whose name he could not recall and was referred to some Facebook posts and YouTube videos including relating to the demonstration. Mr Arshad was aware that the claimant had his own YouTube channel. He did not speak to any other potential witness or seek any further documentary evidence. He was aware that other imams had expressed opposition to Irfan Shah. He considered the difference in the claimant's behaviour to be that he had come out publicly and been involved in protests.

43. Mr Arshad met with the claimant on 5 April. He accepted that the claimant's suspension should only have been for a couple of weeks, but, due to the trustees going on pilgrimage, a delay had resulted. He asked the claimant if he accepted that he had made some speeches and comments on social media and other forums calling the trustees out. The claimant said that they did not like the fact he came out publicly against them saying that he had raised issues about Irfan Shah several times going back to 2021.

44. Mr Arshad asked him about the record of the disciplinary meeting on 31 July 2021. The claimant's understanding was that he had been suspended for a couple of weeks and given a warning. He said that it was about rudeness towards committee members and agreed when Mr Arshad said that he had also raised objections about Irfan Shah.

45. The claimant accepted that in the sermon on 3 February he had demanded that the respondent's committee came and explain themselves before him and that he said that they were in breach of the constitution. He also agreed that he was encouraging a protest against Irfan Shah on 5 February. The claimant said that there was a consensus of scholars that Irfan Shah was espousing Shia beliefs. Mr Arshad said that he did not want to get involved in a debate on his beliefs, but had noticed that there were Shias on social media who were opposed to Irfan Shah's expressions of belief. The claimant expressed the view that there was clear evidence from Irfan Shah's own words and actions that prove that he was "away" from the Sunni creed which was in violation of the respondent's constitution. Mr Arshad said that self-determination was an important principle and it was dangerous to put labels on people. The claimant said that other scholars within the respondent agreed with him, but would not come out publicly because of fear that they would lose their jobs.

46. There was a debate about the Punjabi phrases used with reference to the trustees which the claimant denied was equivalent to swearing or amounted to derogatory comments.

47. The claimant said that he had told the management committee that they are in violation of Sunni creed and also guilty of other systemic failures such that the trustees were unqualified, uneducated people engaging in nepotism. He said that if he wanted to really expose them, he could raise bigger protests against them.

48. The claimant said that he had and accepted that he might not have approached the matter in the right way and wanted to find a way to go back to his role at the Haworth Road mosque. Mr Arshad replied: "feels this is positive and will discuss with trustees. However, trustees do feel there is case to answer and that I will be organising a disciplinary meeting for the following week." He said that the claimant could present his position in the disciplinary meeting and see

if they would allow him to go back to the mosque, but if they found that there were sufficient grounds to dismiss, they could dismiss.

49. Mr Arshad told the tribunal that he was aware that there was some opposition to Irfan Shah, but also that many scholars supported him. There were fellow imams in the respondent who supported him as well as some who had concerns. The claimant brought to his attention at the meeting that there was an edict from India critical of the beliefs Irfan Shah held. Mr Arshad told the tribunal that he felt uncomfortable discussing creedal issues with a scholar where he was not qualified to discuss a person's beliefs. He did not consider it to be part of his remit to consult other scholars or obtain an academic opinion on creedal issues.

50. He agreed that, as far as he knew, the protest on 5 February had been peaceful.

51. Mr Arshad's view was that the "banday" phrase could have a number of meanings, but that it was derogatory in effectively asserting that people were not acting as the sons of human beings. In answer to questions from the tribunal, Mr Arshad confirmed that the literal meaning was not a calling of someone a "bastard". He accepted that, at the subsequent disciplinary hearing, Mr Hussain expressed that this is what he considered the comment to mean. – Mr Arshad had been unaware of that prior to the disciplinary hearing. He did not see that meaning in the words himself, but thought anyone at the receiving end of it would probably find it to be offensive. The "sidda kam karrow" comment could imply that someone was acting in an underhand manner given that they were being exhorted to do the right thing. Again, he thought it was derogatory. He accepted that the claimant had explained what the words meant to him and that he had not meant to offend anyone. However, that did not mean that the words were received the same way by the trustees. For him, the words were being used at a demonstration to create some atmosphere, get people on side or worked up.

52. Whilst he accepted that he had said that the trustees felt there was a case to answer, it was his decision to move the matter further to a disciplinary hearing. He focused on the sermon and demonstration where he considered that the claimant was calling someone out for being a Shia and making derogatory comments about the trustees. Mr Arshad said that the claimant was not dismissed because of his belief saying that everyone is entitled to an opinion, but sometimes it was better to do things in a different way and sometimes best not to air such matters publicly, but rather to be careful and sensitive.

53. Mr Arshad did not view the claimant as a whistleblower at any stage. To him that had to have something to do with an illegal act and he couldn't see how that could apply when it came to matters of creed.

54. The claimant telephoned Mr Arshad on 6 April and subsequently produced a note of that conversation. Mr Arshad did not have any detailed recollection of that conversation sufficient for him to deny what the claimant had included in his notes. He had, however, made handwritten comments and amendments to the notes when he received them and, in the circumstances, those amendments are likely to be the extent of his disagreement. Mr Arshad told the claimant that he had spoken to Mr Hussain who was not willing to allow him back to work at Howarth Road due to the breakdown of trust due to his behaviour. Mr Arshad said that the disciplinary meeting would be held on 12 April. Possibilities included dismissal due to gross misconduct or dismissal on notice. In either case, misconduct would have to be disclosed to any future employers and this would mean that the claimant could not work for the respondent again in the future. Mr Arshad, the tribunal accepts, on the basis of his amendment to the nores, also said that the claimant could make a case to be allowed to continue to work at Howarth Road and not be involved in the wider JTI organisation.

55. Another option was stated to be that he entered into a settlement agreement and leave where there would be no note on his employment record and he could apply to work for the respondent at some point in the future, Mr Hussain understanding that the claimant was young, talented and had contributed greatly to the organisation. However, he reiterated that currently there was no way of returning to work within the respondent even within another centre given the nature of his words and actions. Mr Arshad said that he had mentioned to Mr Hussain the possibility of the claimant working within his mosque and not interfering with the trustees. The claimant's recollection of the conversation was that it was said that Mr Hussain would not agree to this, but the tribunal also accepts, from the limited amendment made to the notes by Mr Arshad, that he said that Mr Hussain could consider this.

56. Mr Arshad wrote to the claimant on 6 April 2023 requiring him to attend a disciplinary meeting on 13 April. This was to discuss a number of listed allegations. These were that the claimant had caused a fundamental breach of trust and confidence; bringing the respondent into disrepute by making defamatory/derogatory remarks about it and its trustees; trying to instigate a public reaction against a guest speaker; asking the respondent's trustees to come and face him in relation to a guest speaker and using abusive terms towards trustees in the public demonstration on the respondent's grounds on 5 February 2023. Mr Arshad told the tribunal that he considered the claimant's comments to potentially amount to hate speech in the context of the respondent being a Sunni organisation and the schism between those who follow the Sunni and Shia traditions. Saying that someone was a Shia this was a very dangerous thing to do - an emotive act which could cause difficulty for the individual accused and be interpreted as an act of hatred telling people to confront Irfan Shah at the Westgate mosque.

57. Various documents were enclosed. These included an extract from a text message sent by the claimant to the respondent on 29 January, a poster

advertising the demonstration, the "previous warning" of 31 July 2021, a transcript of the sermon the claimant had given on 3 February and undated notes said to be made by the claimant attacking the guest speaker and trustees. The tribunal has not seen this last document.

58. The claimant was warned that, if the allegations were proven, disciplinary action up to dismissal could be taken.

59. The claimant was given a right to be accompanied. Reference was made to a staff handbook and disciplinary rules, but these were in a current state of preparation only and none had been issued within the respondent at this stage.

60. The claimant responded by letter of 12 April 2023 alleging that he was being victimised for having raised whistleblowing concerns. He said that he was concerned that the respondent was breaching its own constitution. He said that he had raised whistleblowing concerns verbally to the trustee Ahsan Shah in summer 2021, in a meeting on 13 November 2021 and had also contacted the respondent on 31 January 2023 but was ignored. He referred to having raised concerns with Mr Hussain in the summer of 2021 and to him and other trustees in the message on 29 January 2023, but was ignored. Hence "after exhausting all avenues in resolving the serious creedal issues directly with the trustees" he believed it was reasonable in the public interest and his religious and moral duty to raise the whistleblowing concerns to his congregation during his 3 February sermon. He had also joined a public protest on 5 February to raise the same concerns. He also attached to this letter a timeline setting out more detail.

61. The disciplinary hearing took place on 13 April before Mr Hussain and with Mr Arshad in attendance. Mr Hussain told the tribunal that he had watched some of the video of the demonstration, but not the entire footage.

62. Mr Hussain considered the claimant's sermon on 3 February to be a breach of trust in publicly alleging that the trustees and Irfan Shah were violating the Sunni creed and announcing a forthcoming protest, encouraging the congregation to attend. He considered the allegations to be untrue. There were always variations of opinion among scholars, but that did not take individuals outside of the Sunni creed. In cross-examination as to why what the claimant said was considered as hate speech, Mr Hussain said that he was asking people to go on a demonstration and for people to shout that Irfan Shah was a Shia and "Irfan out". It was an act of hatred to call a Sunni a Shia. The claimant was not inciting violence, but he was inviting people to go on a demonstration and on a sacred day gave a sermon and used it to turn people against the respondent, its trustees and Irfan Shah. There was a concern regarding potential violence as illustrated by the respondent's involvement of a security firm and informing the police.

63. As already referred to, the comments made by the claimant in Punjabi were discussed. Mr Hussain expressed to the tribunal the view that whilst the literal translation was “be the son of a man” it meant that someone was a “bastard” and was very offensive. The other phrase regarding doing the right thing meant that the trustees were considered to be “bent”. He accepted in cross-examination that there was room for different meanings, but that is how the phrases were used. The former phrase meant that the trustees were being accused of not being legitimate children and of acting like animals. He felt that the claimant was effectively issuing a warning that, if the trustees didn’t change their position, there would be consequences.

64. Mr Hussain considered that, upon and despite such explanation, the claimant still did not show remorse. Mr Hussain told the tribunal that he wanted to know if the claimant would reconsider his position and said that he wanted the claimant to stay within the organisation. However, the claimant remained adamant in his views, showed no remorse and continued to make accusations against the trustees. The claimant was accusing them of being uneducated and guilty of nepotism. He did not accept that the claimant had ever apologised at the hearing. The claimant said that he did, but, on balance, he did not go further than apologising if offence was caused at most. The claimant did not withdraw the allegations or admit he had made a mistake. Mr Hussain said that no mosque would accept him unless there was a demonstration of remorse. He rejected the claimant’s contention that he had told the claimant that the claimant should find a new place to set up a mosque and that the respondent would fund it. In all the circumstances, such offer is unlikely to have been made. Mr Hussain accepted that after the disciplinary hearing, in the car park, he spoke well of the claimant in terms of his abilities and tried to explain the values and attitudes which would be necessary for a congregation to accept the claimant as an imam in the future.

65. The decision to dismiss, Mr Hussain told the tribunal, was based on a breach of trust and bringing the respondent into disrepute as well as saying that Irfan Shah was a Shia - at was clearly implied by him saying that Irfan Shah preached Shia beliefs. He said that he accepted that the claimant was entitled to have those opinions. He noted that the claimant had spoken on social media for years without the respondent objecting. He had the right to address the issue in a scholarly manner, but needed to be respectful and polite. It was only when he said that there were creedal violations by the respondent in his sermon and involved himself in a public demonstration that the respondent took issue.

66. The claimant maintained that Mr Arshad had said that Irfan Shah could just respond “stuff you” to the claimant’s calling him out about his beliefs. Mr Arshad denied saying this. He said that he might have said that Irfan Shah, as a guest speaker, did not need to engage with anyone who he didn't want to. His understanding was that the claimant wanted people to explain their beliefs so he (the claimant) could tell them where they were going wrong.

67. Mr Hussain told the tribunal that all of the trustees ultimately made the decision to dismiss after the disciplinary hearing and that they also approved the decision to reject the claimant's appeal. After the disciplinary hearing he had had a discussion with trustees and that is what they decided.

68. Mr Hussain wrote to the claimant on 13 April confirming the decision to dismiss the claimant with immediate effect for gross misconduct. He concluded that the claimant had caused a fundamental breach of trust and confidence "where you continue to accuse the trustees of "creedal violations" which I totally reject and regard as defamatory." He said that it was established that the claimant had engaged in the use of hate speech towards a guest speaker using their premises as a platform and had tried to instigate a public reaction against a guest speaker. He concluded that the claimant had made derogatory/defamatory comments about the trustees at the demonstration which were posted on YouTube. He referred to having given the claimant several opportunities to clarify his position, but that the claimant had continued to make attacks of a religious and defamatory nature against the trustees. He said that he also found the claimant's allegations against the trustees to be offensive and defamatory where the claimant had referred to systemic failures when interviewed by Mr Arshad. He said that he had considered whether there was any alternative sanction, but had concluded that the conduct was so serious that anything short of dismissal would not be appropriate. The claimant was given the right of appeal.

69. The claimant appealed by letter of 20 April sent to Mr Arshad at the respondent's central office in Bradford. This was received. He maintained that he had been dismissed for whistleblowing. He also said that his dismissal was unfair and discrimination on the basis of his religious beliefs. He set out his religious belief and opinion as regards creedal violations. He said that he had not engaged in hate speech or any incitement. He said his comments at the protest were not defamatory or intended to insult, having clarified that he simply meant that he wanted the trustees to do the right thing. He said that his comments regarding systemic failures within the respondent was merely an opinion and not a personal attack on an individual. He complained that the process of suspension and investigation had been unnecessarily prolonged and that the decision to remove him had been predetermined.

70. The claimant wrote further to Mr Arshad at the same address copied to his email account repeating the key basis of his appeal and attaching various documentation which included evidence of other scholars' similar views to the claimant's about Irfan Shah. He included his note of the telephone conversation of 6 April with Mr Arshad and other evidence which he said showed that the decision was predetermined. He attached a number of emails from individuals said to support his position, including that the decision to dismiss was predetermined.

71. Mr Arshad said that he had never seen this further correspondence and documentation provided. They were not therefore considered at the appeal stage.

72. The claimant wrote to Mr Arshad again on 5 May 2023 repeating the key basis of his appeal and saying that he had already submitted documents in support of his appeal. Mr Arshad said that this was never received by him.

73. An appeal meeting took place on 19 May 2023 before Mr Sehgal, president of Northside Mosque. Mr Arshad also attended. He did not have the aforementioned further correspondence and evidence sent by the claimant to Mr Arshad. He did not have the claimant's detailed timeline and letter complaining of victimisation which the claimant had presented at the disciplinary hearing. Nor had he reviewed the content of the claimant's sermon or viewed more than brief but incomplete footage of the demonstration. He said that he understood from others that the claimant had commented on his perception of the trustees' failings on social media, but accepted that he had not seen any such evidence himself.

74. Mr Sehgal wrote to the claimant on 1 June 2023. As regards the claimant's belief that the trustees had committed creedal violations, he said that this was completely denied by the trustees. He said that the evidence the claimant cited was not proof that Irfan Shah was a Shia and the edict he had provided did not mention Irfan Shah by name. He noted that many scholars were requesting to debate Irfan Shah because they believe he holds views contrary to theirs. He also found that many scholars held him in high regard due to his lifelong service to the Sunni community.

75. Mr Sehgal's evidence to the tribunal was that he was not a scholar and could not make a judgment on creedal violations – this was beyond his understanding. He said that he had not seen any academic responses to the questions of alleged creedal violations. His above finding appears at odds with that position and suggests that the content of the outcome was not purely derived from Mr Seghal's own independent conclusions.

76. As regards engaging in hate speech or incitement, he considered that the claimant's explanations were inconsistent and contradictory. He did not appear to have any understanding of how his accusations might be detrimental to Irfan Shah's well-being. Mr Sehgal explained to the tribunal that there were extreme elements in the Islamic faith regarding the status of Sunni and Shia Muslims. The claimant demonstrating against his employer outside a mosque was not the right way to get his grievances across.

77. Although he found the claimant's comments at the demonstration not to be defamatory, he did find that they could be deemed offensive by the trustees because "there is a high level of personal attacks on the trustees and their abilities". He concluded that their upset arising out the aforementioned Punjabi

praises was understandable. He told the tribunal that everyone interpreted the phrases used in their own way. He did not personally believe that they were "strong swear words".

78. He stated that the claimant's religious views and opinions are a matter for him. However, the claimant had not been appointed in a position to decide who is and is not of the Sunni creed. Attacking the creed of the trustees who had devoted a large part of the lives to it went to the heart of the relationship of trust and confidence. Mr Sehgal concluded that the claimant was taking an extreme position and playing the role of judge and jury.

79. At the hearing, Mr Sehgal praised the claimant for taking a stand and speaking what he believed – he took issue with the claimant speaking publicly, including through social media. However, all he could be expressing was his own opinion. He felt that others were egging the claimant on for their own agendas. If they agreed with the claimant, it was wrong for them to have stayed silent.

80. He considered that the making of allegations regarding systemic failures of the trustees without providing evidence to back up his opinion struck at the very heart of the trust and confidence necessary in any relationship. He did not agree that the claimant's words had been unfairly used against him in the disciplinary meeting. He told the tribunal that he considered that they were part of Mr Hussain's reason for the claimant's dismissal. Mr Sehgal described the claimant's allegations as "out of order" in circumstances where he could not produce evidence to support them.

81. Mr Sehgal agreed that the claimant's period of suspension was prolonged and should have been kept as short as possible. He said that he had been advised that this was due to trustees not being available due to their attendance on pilgrimages. He said that he had made his views known that the period of suspension should be minimised and accepted that this would have caused the claimant undue stress and anxiety.

82. He said that having reviewed the evidence it was his view that dismissal was justified and not premeditated. As regards the claimant's assertion that the real reason for dismissal was whistleblowing, he said that he was satisfied that the dismissal was as a result of his actions and comments on a guest speaker and the trustees. He had found no evidence to support the claimant's claim that the trustees were in breach of their legal obligations to the charity, nor that they had acted in breach of the statement of faith.

83. At the end of the hearing, Mr Sehgal had told the claimant that the trustees would make their decision and that he would just give his opinion. Despite Mr Sehgal seeking to then tell the tribunal that the trustees had nothing to do with the appeal decision, the evidence suggests a discussion of trustees before the decision was issued – a decision which was not uninfluenced by the views of those not in attendance at the appeal meeting, including Mr Hussain.

84. The claimant has before the tribunal raised that an imam had made similar comments to the claimant in a Facebook post, yet no action had been taken against him. This related to a posting made on 15 December 2023 a significant time after the claimant's dismissal. The imam expressed a view that the lack of work taking place within the facilities built by a previous generation was disheartening, saying that they had incompetent people in positions of authority with some just there for a monthly meal and taking advantage of nepotism.

85. The claimant confirmed in cross-examination that he was saying that he had been less favourably treated to others who did share his views including those who had made public statements. He said that he saw that as unfair. He also accepted that the respondent wouldn't allow someone with exclusively Shia beliefs to preach in its mosques if it believed that such person was Shia.

86. The claimant has also raised a charity commissioner report of 9 April 2024 into a separate charity in which Irfan Shah is involved where there was reference to his views aligning with extremism. The respondent was unaware of any charity commission investigation or report findings at any earlier stage.

87. The claimant told the tribunal that he had shown remorse at the time and now accepted that maybe he should not have done the protest. He did regret the way he had done things. He believed that he was doing his religious duty and had to adhere to the Sunni creed. He believed that he was defending the respondent's constitution. It did not occur to him that what he was doing might be gross misconduct.

Applicable law

88. Section 43A of the Employment Rights Act 1996 provides that a "protected disclosure" means a qualifying disclosure (as defined by Section 43B) which is made by a worker in accordance with any of the Sections 43C to 43H. Section 43B of the Employment Rights Act 1996 provides as follows:-

> *"(1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is in the public interest and tends to show one or more of the following:-*
>
> *…*
>
> *(b) that a person has failed, is failing, or is likely to fail to comply with any legal obligation to which he is subject; ……"*

89. It is clear that a disclosure must actually convey facts and those facts must tend to show one of the prescribed matters – see **Cavendish Munro Professional Risks Management Ltd v Geduld 2010 ICR**. The making of an allegation or the expression of opinion or state of mind is insufficient. Langstaff J noted, however, in **Kilraine v London Borough of Wandsworth 2018 ICR 1850** (as endorsed by the Court of Appeal in that case) that "the dichotomy between "information" and "allegation" is not one that is made by the statute itself" and that "it would be a pity if tribunals were too easily seduced into asking whether

it was one or the other when reality and experience suggest that very often information and allegation are intertwined". Two or more communications taken together can amount to a qualifying disclosure even if, taken on their own, each communication would not – see **Norbrook Laboratories (GB) Ltd v Shaw ICR 540**.

90. In terms of a reasonable belief, the focus is on what the worker in question believed rather than on what a hypothetical reasonable worker might have believed in the same circumstances. There must, however, be some objective basis for the worker's belief. The exercise involves applying an objective standard to the personal circumstances of the person making the disclosure. It has been said that the focus on belief establishes a low threshold. However, the reasonableness test clearly requires the belief to be based on some evidence beyond rumours, unfounded suspicions or uncorroborated allegations.

91. As regards the public interest requirement, the tribunal refers to the case of **Chesterton Global Limited v Nurmohamed [2017] IRLR 837** where Underhill LJ cited the following factors as a useful tool in determining whether it might be reasonable to regard a disclosure as being in the public interest as well as in the personal interest of the worker:

> "*the numbers in the group whose interests the disclosure served…..;*
> *The nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed – a disclosure of wrongdoing directly affecting a very important interest is more likely to be in the public interest than a disclosure of trivial wrongdoing affecting the same number of people, and all the more so if the effect is marginal or indirect;*
> *the nature of the wrongdoing disclosed – disclosure of deliberate wrongdoing is more likely to be in the public interest than the disclosure of inadvertent wrongdoing affecting the same number of people;*
> *the identity of the alleged wrongdoing –… "The larger or more prominent the wrongdoer (in terms of the size of its relevant community, i.e. staff, suppliers and clients), the more obviously should a disclosure about its activities engage the public interest…"*

92. Workers can have mixed motives for making disclosures and it was observed in **Chesterton** that the tribunal's power to reduce compensation where a disclosure was not made in good faith demonstrates an intention that some disclosures would qualify for protection though they were predominantly motivated by grudges or self-interest. Nevertheless, motive is likely to be one of the individual circumstances to taken into account by the tribunal when considering whether there was a reasonable belief that the disclosure was in the public interest. An employee who cannot give credible reasons why they thought at the time that the disclosure was made that it was in the public interest, may cast doubt on whether they really thought so at all.

93. Where a worker makes a disclosure to an external organisation (publicly), more stringent rules apply. In order to gain protection he will have to satisfy four conditions set out in Section 43G(1): firstly he must reasonably believe that the information disclosed and any allegation contained in it is substantially true; secondly he has not made the disclosure for the purposes of personal gain, thirdly, one of the three conditions in Section 43G(2) must have been met and in all the circumstances and, finally, it must be reasonable to make the disclosure.

94. The requirement that the allegations are substantially true requires that the worker must believe on a rational basis that the majority of the information and/or allegations contained within the disclosure is true. The requirements of Section 43G(2) include where at the time of the disclosure, the worker reasonably believes that he will be subjected to a detriment by his employer if he makes a disclosure to his employer or a prescribed person. In the circumstances of this case the charity commission amounts to a prescribed person in relation to an alleged failure of the respondent to comply with its constitution and charitable objects. A further requirement is that the worker has already made a disclosure of substantially the same information to his employer.

95. If the necessary conditions set out above are met, there is an overriding requirement for the worker to show that in all the circumstances of the case it was reasonable for him to have made the external disclosure. An objective assessment is to be carried out by the tribunal as at the time the concern is raised. In reaching its decision, the tribunal must take into account the following factors: the identity of the person to whom the disclosure is made; the seriousness of the relevant failure; whether the relevant failure is continuing or is likely to recur; whether the disclosure is made in breach of a duty of confidentiality owed by the employer: in the case of a previous disclosure to the worker's employer, the response of the employer; and in the case of a previous disclosure to the worker's employer, whether the worker complied with an internal procedure authorised by the employer.

96. In terms of the identity of the recipient, the more rational and sensible the choice made by the worker, the more likely it is that the tribunal will find that the external disclosure was reasonable in all the circumstances. Where a prior disclosure has been made to the employer, the response of the employer to be considered relates not just to actual action taken by the employer but to action which the employer might reasonably be expected to have taken as a result.

97. Pursuant to Section 47B of the Employment Rights Act 1996: "A worker has the right not to be subjected to any detriment by an act, or any deliberate failure to act, by his employer done on the ground that the worker made a protected disclosure."

98. Section 48(2) provides that on a complaint to an Employment Tribunal

> "… it is for the employer to show the ground on which any act, or deliberate failure to act, was done."

99. As regards the meaning of "detriment" the tribunal refers to the case of **Chief Constable of West Yorkshire Police –v- Khan [2001] 1 WLR** where it was said that the term has been given a wide meaning by the Courts and quoting the case of **Ministry of Defence –v- Jeremiah [1980] QB 87** where is was said that *"a detriment exists if a reasonable worker would or might take the view that the [treatment] was in all the circumstances to his detriment".*

100. The issue of causation is crucial. The tribunal refers to the case of **NHS Manchester v Fecitt and others [2001] EWCA Civ 1190** and in particular the judgment of Elias LJ. His view was that section 47B will be infringed if the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistleblower. He said:

> *"Once an employer satisfies the Tribunal that he has acted for a particular reason – here, to remedy a dysfunctional situation – that necessarily discharges the burden of showing that the proscribed reason played no part in it. It is only if the Tribunal considers that the reason given is false (whether consciously or unconsciously) or that the Tribunal is being given something less than the whole story that it is legitimate to infer discrimination in accordance with the **Igen** principles".*

101. Whether detriment is on the ground that the claimant made a protected disclosure therefore involves an analysis of the mental processes (conscious or unconscious) of the relevant decision makers. It is not sufficient to demonstrate that "but for" the disclosure, the employer's act or omission would not have taken place.

102. Section 103A of the Employment Rights Act provides that:

> *"An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure."*

103. This requires again a test of causation to be satisfied. This section only renders the employer's action unlawful where that action was done because the employee had made a protected disclosure. In establishing the reason for dismissal, this requires the tribunal to determine the decision-making process in the mind of the dismissing officer which in turn requires the tribunal to consider the employer's conscious and unconscious reason for acting as it did.

104. The issue of the burden of proof in whistleblowing unfair dismissal cases was considered in the case of **Maund v Penwith District Council 1984 ICR 143**. There it was said that the employee acquires an evidential burden to show – without having to prove – that there is an issue which warrants investigation and which is capable of establishing the competing automatically unfair reason that he or she is advancing. However, once the employee satisfies the tribunal that there is such an issue, the burden reverts to the employer who must prove

on the balance of probabilities which one of the competing reasons was the principal reason for dismissal.

105. It is appreciated that sometimes there will be a dearth of direct evidence as to an employer's motives in deciding to dismiss an employee. Given the importance of establishing a sufficient causal link between the making of the protected disclosure and the dismissal, it may be appropriate for a tribunal to draw inferences as to the real reason for the employer's action on the basis of its principal findings of fact. The tribunal is not, however, obliged to draw such inferences as it would be in any complaint of unlawful discrimination.

106. Under Section 103A, an employee will only succeed in a claim of unfair dismissal if the tribunal is satisfied on the evidence that the principal reason is that the employee made a protected disclosure. If the fact that the employee made a protected disclosure was merely a subsidiary reason to the main reason for dismissal, then the claim will not be made out. This contrasts with a claim of unlawful detriment, which can be well-founded where the protected disclosure is one of many reasons for the detriment, so long as the disclosure materially influences the decision maker, whereas Section 103A requires the disclosure to be the primary motivation for dismissal.

107. It is no defence for the employer to show that it did not believe that the disclosure was protected, whether it ever turned its mind to the question at the time.

108. The fact that an employee uses intemperate language or behaved inappropriately when making a disclosure should not automatically preclude the disclosure from qualifying for protection. However, a tribunal will have to undertake the often difficult task of determining whether the reaction to the way in which a disclosure was made can be distinguished from its reaction to the act of making the disclosure itself. In the case of **Kong v Gulf International Bank (UK) Ltd 2022 EWCA Civ 941** the Court of Appeal stress that the separability principle is not a rule of law or a basis for deeming an employer's reason to be anything other than the facts disclose it to be. It is simply a label that identifies what may in a particular case be a necessary step in the process of determining what as a matter of fact was the reason for impugned treatment. There is no objective standard against which behaviour must be assessed to determine whether the separability principle applies in a particular case, nor any question of requiring behaviour to reach a particular threshold of seriousness before it can be distinguished as separable from the making of the protected disclosure itself.

109. The court referred to the case of **Martin v Devonshire Solicitors 2011 ICR 352** which concerned a complaint of victimisation and where it was held that there can be cases where an employer subjects a person to a detriment in response to doing a protected act where the employer could say that the reason for the detriment was not the complaint as such but some feature of it which could properly be treated as separable. In **Panayiotou v Chief Constable of Hampshire Police 2014 ICR D23**, the EAT's decision was that the reason for dismissal and detriment was not the fact that P, a police officer, made protected

disclosures, but the manner in which he pursued his complaints. P was found to campaign relentlessly if dissatisfied with the action taken by his employer following his disclosures resulting in the employer having to devote a great deal of management time to responding. According to the tribunal he had become completely unmanageable. The EAT concluded that it was the combination of his long-term absence from work and the way in which he pursued those complaints which led to his employer acting as it did. In some cases, however, it will be impossible to draw a line between the disclosure and the manner of that disclosure even where the manner of the disclosure exacerbates an already difficult working relationship.

110. The claimant complains of direct discrimination based on religion. In the Equality Act 2010 direct discrimination is defined in Section 13(1) which provides: *"(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others."* In terms of a relevant comparator for the purpose of Section 13, *"there must be no material difference between the circumstances relating to each case".*

111. The Act deals with the burden of proof at Section 136(2) as follows:-

> *"(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravenes the provision concerned, the court must hold that the contravention occurred.*
> *(3) But subsection (2) does not apply if A shows that A did not contravene the provisions".*

112. In **Igen v Wong [2005] ICR 935** guidance was given on the operation of the burden of proof provisions in the preceding discrimination legislation albeit with the caveat that this is not a substitute for the statutory language. The Tribunal also takes notice of the case of **Madarassy v Nomura International Plc [2007] ICR 867**.

113. It is permissible for the Tribunal to consider the explanations of the respondent at the stage of deciding whether a prima facie case is made out (see **Laing v Manchester CC IRLR 748**). Langstaff J in **Birmingham CC v Millwood 2012 EqLR 910** commented that unaccepted explanations may be sufficient to cause the shifting of the burden of proof. At the second stage the employer must show on the balance of probabilities that the treatment of the claimant was in no sense whatsoever because of the protected characteristic. At this stage the Tribunal is simply concerned with the reason the employer acted as it did. The burden imposed on the employer will depend on the strength of the prima facie case – see **Network Rail Infrastructure Limited v Griffiths-Henry 2006 IRLR 865**.

114. The Tribunal refers to the case of **Shamoon v The Chief Constable of the Royal Ulster Constabulary [2003] ICR 337** for guidance as to how the Tribunal should apply what is effectively a two stage test. The Supreme Court in **Hewage v Grampian Health Board [2012] UKSC 37** made clear that it is important not to make too much of the role of the burden of proof provisions. They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. However, they have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other.

115. The tribunal refers to the case of **Omooba v (1) Michael Garrett Associates Ltd and (2) Leicester Theatre Ltd [2024] EAT 30** and the Judgment of Mrs Justice Eady, President where she says:

> "90. Separating reason from context will be for the ET as the first instance, fact-finding tribunal, see per Simler LJ (as she then was) paragraph 56 **Kong v Gulf International Bank (UK) Ltd** [2022] IRLR 854 CA; albeit this may be an exercise that requires the ET to "*look with a critical - indeed sceptical - eye to see whether the innocent explanation given by the employer*" is indeed the real explanation, per Elias LJ paragraph 51 **Fecitt & Others v NHS Manchester (Public Concern at Work Intervening)** [2012] ICR 372 CA.
>
> 91. **Kong** and **Fecitt** were both whistleblowing cases, but the approach is the same in the field of equality law; see **Martin v Devonshires Solicitors** [2011] ICR 351, and **Amnesty International**. The determination of the real reason for the impugned conduct may require a carefully nuanced evaluation of the evidence. Thus, in some cases it may be found that the relevant protected characteristic was an operative cause of the less favourable treatment, notwithstanding an otherwise benign intent to thereby avoid workforce unrest (see **Din v Carrington Viyella Ltd** [1982] ICR 256, EAT (albeit, in **Din**, that question was remitted) and **R v Commission for Racial Equality, ex p Westminster City Council** [1985] ICR 827 CA); in others, although the protected characteristic in issue might have formed part of the relevant background to a decision taken in an attempt to resolve a workplace dispute, it might nevertheless be held not to have been a significant influence on that decision (**Seide v Gillette Industries Ltd** [1980] IRLR 427 EAT).
>
> 92. The distinctions in question have long been recognised in cases involving allegations of religion and belief discrimination, even allowing for the particular challenges that can arise, given that there will often be no clear dividing line between holding and manifesting a belief and it can thus be necessary to

test whether the decision-taker's reason was in fact the complainant's religion or belief (as made manifest in some way) or its objectionable manifestation; see **Chondol v Liverpool City Council** [2009] UKEAT/0298/08; **Grace v Places for Children** UKEAT/0217/13; **Wastney v East London NHS Foundation Trust** [2016] ICR 643 EAT; **Page v NHS Trust Development Authority** [2021] ICR 941 CA; **Higgs v Farmor's School** [2023] ICR 89 EAT. More generally, the importance of distinguishing between that which forms part of the context, and that which is the operative reason, can be seen in **Lee v Ashers**, where Lady Hale held that the respondent's refusal to supply a cake with a political message iced onto it was less favourable treatment "*afforded to the message not to the man*" (paragraph 47): Mr Lee's political opinion was part of the context (it was why he commissioned the cake), but it was not the reason why the respondent refused to serve him.

116. In a claim of ordinary unfair dismissal, it is for the employer to show the reason for dismissal and that it was a potentially fair reason. One such potentially fair reason for dismissal is a reason related to conduct pursuant to Section 98(2)(b). This is the reason relied upon by the respondent. If the respondent shows a potentially fair reason for dismissal, the tribunal shall determine whether dismissal was fair or unfair in accordance with Section 98(4) of the Employment Rights Act 1996 ("ERA"), which provides:-

> *" [Where] the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –*
> *depends upon whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and*
> *shall be determined in accordance with equity and the substantial merits of the case".*

117. Classically in cases of misconduct a Tribunal will determine whether the employer genuinely believed in the employee's guilt of misconduct and whether it had reasonable grounds after reasonable investigation for such belief. The burden of proof is neutral in this regard.

118. The Tribunal must not substitute its own view as to what sanction it would have imposed in particular circumstances. The Tribunal has to determine whether the employer's decision to dismiss the employee fell within a band of reasonable responses that a reasonable employer in these circumstances might have adopted. It is recognised that this test applies both to the decision to dismiss and to the procedure by which that decision is reached.

119. A dismissal, however, may be unfair if there has been a breach of procedure which the tribunal considers as sufficient to render the decision to dismiss unreasonable. The tribunal must have regard to the ACAS Code of Practice on Disciplinary and Grievance Procedures 2015.

120. If there is such a defect sufficient to render dismissal unfair, the Tribunal must then, pursuant to the case of **Polkey v A E Dayton Services Ltd [1998] ICR 142** determine whether and, if so, to what degree of likelihood the employee would still have dismissed in any event had a proper procedure been followed. If there was a 100% chance that the employee would have been dismissed fairly in any event had a fair procedure been followed, then such reduction may be made to any compensatory award. The principle established in the case of **Polkey** applies widely and beyond purely procedural defects.

121. In addition, the Tribunal shall reduce any compensation to the extent it is just and equitable to do so with reference to any blameworthy conduct of the claimant and its contribution to his dismissal – ERA Section 123(6).

122. Under Section 122(2) of the ERA any basic award may also be reduced when it is just and equitable to do so on the ground of any kind conduct on the employee's part that occurred prior to the dismissal.

123. Applying these legal principles to the facts as found, the tribunal reaches the conclusions set out below.

Conclusions

124. The tribunal firstly considers the complaint of direct discrimination because of religious belief. Two of the acts complained of as less favourable treatment, the claimant's suspension and his dismissal, are inevitably linked in circumstances where the tribunal finds that there was a common reason for them.

125. Indeed, the tribunal has found it helpful to focus on the reason for the claimant's suspension and dismissal, appreciating that, for the claimant to succeed, the claimant's religious belief or manifestation of it, need only be a material influence on the decision makers, the respondent's trustees, who all shared the view of Mr Liaqat Hussain.

126. The timing of the claimant's suspension is strongly indicative of the reason for it and his subsequent dismissal. The claimant had, for some time, expressed his views about Irfan Shah and creedal violations, to the trustees' knowledge and at times directly to one or more of them. Whilst there was a potential disciplinary issue in July 2021, this resulted in circumstances where the respondent believed the claimant had been rude to a member of his mosque's management committee. Whilst there was within the claimant's meeting at the end of July with Mr Hussain a discussion about Irfan Shah being believed to

have Shia beliefs, it was the claimant who was most anxious to raise this and there was no disciplinary sanction. The advice given to the claimant was to be careful in how he raised his concerns of creedal violations. He was not criticised for his views themselves or told that he had to change his views. There was a wider doctrinal dispute amongst scholars/imams about the nature of Irfan Shah's beliefs.

127. It is the claimant's case that in November 2022, one of the trustees was responsible for issuing a statement supportive of the claimant's position, albeit couched in quite general terms. Whilst the claimant was not the person leading objections to Irfan Shah at the meeting of the youth on 13 November 2022, the respondent was again clear where the claimant stood in the doctrinal dispute. It did not seek to take action against the claimant or anyone else involved in speaking out against Irfan Shah. Whilst this was not a closed meeting between scholars, the event was confined to a small audience in the mosque – primarily a discussion amongst scholars with some pupils in attendance.

128. The respondent was then aware in late January 2023 that a poster was in circulation promoting a demonstration against Irfan Shah to take place on 5 February. The claimant was approached with a question as to whether he was involved in that. The claimant responded that he was not, but took the opportunity to repeat his opinion about Irfan Shah's creedal violations and indeed suggest that the respondent was in breach of its own constitution by allowing the promotion of those suggested violations.

129. There was no reaction from the respondent to this message which the claimant sent to at least 3 trustees on 29 January 2023. Had the respondent believed the claimant to be guilty of misconduct in this message, then the tribunal considers that it would have reacted quickly. He was not saying anything new to the respondent and was not the only one doing so. Indeed, the respondent had time to react to his message and to do so before the claimant's sermon of 3 February and his involvement in the demonstration on 5 February. Again, the claimant's message of 29 January was in response to the respondent raising concerns about the promotion of the demonstration.

130. The claimant gave a sermon critical of Irfan Shah's beliefs and encouraging the congregation to attend the demonstration at Friday afternoon prayers and the demonstration followed very shortly thereafter on the Sunday afternoon. The tribunal does not find that any action would have been taken against the claimant were it not for the sermon he had given and, in particular, his involvement in the demonstration. Whilst the dismissal letter refers to accusing the trustees of creedal violations, the tribunal is satisfied on the evidence that the accusation itself was not the reason, but rather the way in which it was made – the letter's reference to the defamatory nature of the accusation is supportive of the way in which it was "published" being the point of concern.

131. The respondent was disturbed that the claimant had used his delivery of Friday prayers as a public platform for publicising a demonstration against Irfan Shah. It was then significantly concerned that the claimant had delivered a

public speech at the demonstration on 5 February outside the central mosque raising what it reasonably believed were highly contentious issues which the claimant was aware were completely at odds with the view of his employer. The claimant, as an imam, held a privileged position in terms of the influence he could exert over those in the Sunni community who did not benefit from his background of religious scholarship. He was speaking to people who he clearly thought he could influence to follow his lead and people who were not in a position to think as independently or critically about the creedal issues being raised as he was. The respondent considered the claimant's behaviour in the demonstration to be wholly inappropriate.

132. The respondent's concerns were not limited to the public nature of his expression of his views, but also to the trustees being brought into disrepute, as they saw it, in terms of the implication of their own religious beliefs diverging from the Sunni creed. By the Punjabi phrases used by the claimant, the trustees did genuinely believe that they were being referred to as "bastards" or, more literally, animals and that they were being accused of being "bent" in not doing the right thing. Objectively, whilst the meaning of the phrases can be disputed, their use by the claimant, in context, was derogatory.

133. The respondent was clearly significantly concerned of unrest and the possibility of threatening behaviour (or worse) given its notification to the police of the demonstration and it engaging security to protect those in the mosque if, as feared, the demonstration got out of hand. The respondent's belief was that an atmosphere was being created where any individual hearing the claimant might consider themselves to be validated in taking their own action against Irfan Shah whether at that point or later and whether in the UK or elsewhere. The claimant's speech was published online. In that sense, they considered the claimant to be guilty of hate speech.

134. Had the claimant not held the relevant religious belief which he manifested, he would never been in the situation where he was dismissed for his giving the sermon and taking part in the demonstration. His belief forms part of the relevant background and context However, his belief was not the operative cause of the respondent's decision to, firstly, suspend him and later terminate his employment.

135. Mr Anderson focussed on the issue of the relevant comparator, the correct one, he submitted, being an imam who did not share the claimant's view of Irfan Shah and who was not disciplined. He points out that the claimant referred in evidence to a quite different comparator – one who did share his opinion, but who was not disciplined, the claimant referring to some such people expressing their views online and in meetings. Indeed, the claimant told the tribunal that he was treated unfairly and inconsistently to those with similar views. He also referred to others who shared his views but were more circumspect about how they expressed them. That is indeed suggestive of the claimant understanding that if had been equally circumspect, he was welcome by the respondent to have and manifest his beliefs. The claimant told the tribunal that he accepted that if he had never given his sermon and spoken at the demonstration, he would not have been suspended or dismissed. He said that there had been no

objection earlier because he had not been publicly critical. He told Mr Arshad during his investigation meeting that the trustees did not like him coming out with statements about Irfan Shah publicly.

136. The reason for suspension and dismissal was not the belief, as made manifest, but rather it's objectionable manifestation as described – its public and, to the respondent, abusive expression which risked a hateful reaction. The two can, on the facts of this case, be separated and the tribunal, on a full consideration of the evidence, concludes that the claimant's religious belief itself did not influence the respondent to any material extent. His suspension and subsequent dismissal were not less favourable treatment because of his religious belief.

137. The claimant also, as a complaint of direct religious belief discrimination, raises the respondent unreasonably delaying the conduct of the disciplinary proceedings. Whilst there was a delay and, despite its relatively short length, it could be termed unreasonable, there are no facts from which the tribunal could reasonably conclude that any delay was because of the claimant's religious belief. There was a background context of him expressing a religious belief, but that is all it was. In terms of the operative cause of the delay, then that, the tribunal finds, was because of the trustees been absent on pilgrimage and the exploration of a potential settlement agreement with the claimant which might have removed the need for any consideration of taking disciplinary proceedings. Insofar as any particular period could be pointed to where there was a lack of action, the tribunal considers that this was a new situation for the respondent with an evident lack of experience on the part of the trustees in how to deal with it and with the respondent having no disciplinary procedure in place to guide them. Certainly, there is a complete absence of any facts from which a discriminatory reason could reasonably be inferred.

138. The tribunal turns now to the complaints of whistleblowing. The first protected disclosure relied upon by the claimant is said to be what he said to Mr Hussain at the meeting on 31 July 2021, which was the meeting which has been referred to as of a disciplinary nature. The claimant raised then that he had outlined 21 objections against Irfan Shah's teachings and sent them to Mr Hussain on 25 June 2021. Mr Hussain's view was that the claimant had not provided any original material – he had rehashed points already circulating on social media and the internet. Nevertheless, whether this view was accurate or not and regardless of whether or not Mr Hussain was already aware of the information, it did constitute the provision of information which, in the claimant's reasonable belief, showed deviations from the Sunni tradition. The claimant provided this information in the reasonable belief that it showed a breach of a legal obligation on the respondent's part. The respondent promotes and teaches the Sunni tradition of Islam and the claimant was aware that its constitution required it to act in accordance with a statement of faith, which again was clearly aligned to the Sunni tradition. The claimant was basing his opinion on the research, the view of a body of scholars and an edict from a religious authority in India which he considered was directed specifically at Irfan Shah and, in any event, listed views, which the claimant understood had been expressed and practices which had been followed by Irfan Shah, which the

authority considered departed from the Sunni tradition. There is no requirement for the claimant to have been correct in his assertion. Whilst clearly many disagreed with this position, including the trustees of the respondent, the claimant was not simply expressing his own opinion, or one arrived at without proper consideration and at least some evidence and academic reasoning. The claimant, further, reasonably believed the disclosure to be in the public interest in that Irfan Shah's sermons and teachings had an effect on the Sunni community and their religious practice. Furthermore, the respondent was supported by public donations given on the basis that it operated in accordance with its charitable objects which included an adherence to its statement of faith. This was a disclosure made directly to the claimant's employer. It was a qualifying protected disclosure.

139. Similar considerations apply to the claimant's second purported protected disclosure made in a meeting with a trustee, Ahsan Shah at his house in July 2022, where the claimant said that Irfan Shah was planning to give sermons and had made statements in breach of Sunni teachings. For the same reasons this was also a qualifying protected disclosure.

140. The claimant next relies on a meeting of the youth on 13 November 2022. Again, the claimant says that he gave information that Irfan Shah, who the respondent was planning to host as a speaker, gave sermons and had made statements in breach of Sunni teachings. The claimant, however, has failed to evidence what he said. The witness evidence the tribunal has heard from the claimant relates to other scholars and religious leaders mentioning the idea of a letter being written to the trustee board to complain about creedal violations contrary to the respondent's constitution and highlighting how Irfan's Shah's presence was bringing the respondent into disrepute. In terms of the claimant's own provision of information, Anis Younis said that his teacher, the claimant, discussed his concerns about how having Irfan Shah within the mosque would affect the congregation. Anis Younis referred to others suggesting a breach of the respondent's constitution. The tribunal, in all the circumstances, can make no positive findings as to what information came from the claimant. Further, this was a discussion between scholars in the presence of some of those they taught in the mosque and with one of the trustees, Ahsan Shah, present. There was no expectation that anything raised would be fed back to the respondent, as employer, for it to deal with the information in any particular way. The claimant cannot be found within this meeting to have made any qualifying protected disclosure.

141. The claimant did however make a protected qualifying disclosure in a message he sent to 3 trustees on 29 January 2023. Within that message he asserted that Irfan Shah was promoting Shia beliefs and, as a Sunni organisation, that could not be allowed as it went against the respondent's constitution. He also referred to the public having funded the respondent for the purpose of promoting Sunni teachings. Again, this was a repetition of a belief the claimant had held since certainly July 2021 where he has shown that his belief in the respondent's breach of a legal obligation was reasonable and that he reasonably believed the disclosure to be in the public interest. This was clearly information provided to his employer in response to a question from

them about his potential involvement in promoting a demonstration against Irfan Shah.

142. The claimant next relies on his sermon given on 3 February 2023 as a protected disclosure. Had the content of the sermon been supplied to the trustees it would have amounted to a protected qualifying disclosure. The core information contained within it aligned with what the claimant had said in the message to trustees sent on 29 January 2023 albeit it went much further and included an encouragement to attend a forthcoming demonstration. Again, the claimant did reasonably believe that the respondent was in breach of a legal obligation and that the information he was providing was in the public interest.

143. This was, however, an external disclosure, indeed a public disclosure to the congregation attending Friday prayers and published thereafter on the claimant's YouTube channel. The claimant must show that further hurdles are surmounted, for this to be regarded as a protected qualifying disclosure. The tribunal considers that the claimant did reasonably believe the provision of information to be substantially true. He had a rational basis for accepting that the opinion of a body of scholars and the religious authority in India was the correct interpretation of where Irfan Shah's beliefs fell in terms of the divergence of Sunni and Shia theology. The tribunal cannot make an assessment as to who is right or wrong or of the provenance, in terms of the quality of scholarship, which supported the claimant's view. Again, certain scholars on a reasoned basis have concluded that Irfan Shah's teachings or some of them were in conflict with the Sunni tradition.

144. The tribunal is satisfied that the disclosure was not made for the claimant's personal gain. The claimant illustrated to the tribunal a strong commitment to his version of his faith and a sense of duty to speak the truth as he saw it. That is what he believed he was doing and the motive for his expressing his belief was that he considered the respondent to be breaching its constitution by hosting a speaker who departed from its statement of faith.

145. The claimant then satisfies the additional condition that he had previously made a disclosure of substantially the same information to his employer. The tribunal rejects, as an alternative, that he reasonably believed that he would be subjected to a detriment if he made the disclosure to his employer – clearly, he had felt comfortable in making the disclosure in the message sent to his employer on 29 January 2023 and there had been no repercussions for him. There had been a disciplinary issue in July 2021 but arising out of other aspects of the claimant's conduct and with no sanction. The claimant had continued thereafter to express his religious beliefs without consequence.

146. The key question is whether the disclosure made on 3 February was reasonable in all of the circumstances. The tribunal goes through all of the same steps and arrives again at this point in respect of what the claimant said at the demonstration on 5 February 2023, which is relied upon as his final protected qualifying disclosure.

147. These were both disclosures which can be termed as public even without their dissemination on the claimant's YouTube channel. The sermon on 3 February was to a congregation of Sunni Muslims and, it can be assumed, largely habitual attendees at the claimant's Howarth Road mosque, albeit with no certainty and no way of the claimant knowing whether the congregation included any guests. As an imam, speaking essentially to his local flock, he was in a position of significantly greater knowledge of theological issues where a member of the congregation was unlikely to be able to interrogate any argument put forward by the claimant and where the recipients of the sermon might be easily and significantly influenced. They were not individuals who might foreseeably be able to right any wrongs within the trusteeship of the respondent.

148. The statement at the demonstration went to a potentially wider audience, including those who might not habitually attend the claimant's or any mosque and where any member of the community passing the vicinity might hear what was being said.

149. The tribunal can only conclude that the purpose of the claimant raising his concerns was to create some form of leverage to force the trustees to engage with his views and ultimately change their own. Further, in terms of reasonableness, the claimant was expressing and supporting a message that a religious figure was guilty of a form of blasphemy. There was an inherent danger in terms of the reaction it might produce of making public pronouncements that a purported Sunni was, in reality, a Shia Muslim.

150. The tribunal considers then the factor of the seriousness of the relevant failure disclosed. Whilst the tribunal must not downplay the potential significance of a charity acting outside its defined objects, the context was of a doctrinal dispute with genuine and reasoned divergences of beliefs on both sides. Without in any sense again seeking to denigrate the importance of adherence to religion for those of faith, the tribunal cannot equate the nature of the failure being disclosed to one where, for instance, life, the environment or property might be being endangered.

151. The tribunal notes that the alleged failure was continuing or likely to recur, that there was no breach of confidentiality and that the claimant had to address his concerns without the benefit of any whistleblowing policy or even a basic grievance policy in operation within the respondent.

152. Whilst a previous protected disclosure had been made to the employer, the most recent and first by the claimant with explicit reference to the respondent acting in breach of its constitution had only been made a matter of a few days earlier. The claimant had given the respondent no reasonable time to consider and respond to his message of 29 January. The only other earlier protected disclosures, as found, occurred in July 2021 and the claimant's issues were discussed. The claimant knew that the respondent did not agree with his position and was not persuaded to cease inviting Irfan Shah as a guest

speaker. By 3 and 5 February 2023 these disclosures and how they were dealt with were somewhat historical with the claimant having no expectation that the respondent might or would be taking any further steps in response to them. Any such expectation would have ceased many months earlier.

153. This claimant had other options, beyond a disclosure to his employer and falling short of a public disclosure of his concerns. The respondent had, as the claimant well understood, to comply with the regulation of the Charity Commissioner, which acted as indeed the prescribed person for this sector, but the claimant at no stage sought to involve them prior to the public sermon and speech at the demonstration. In all the circumstances, the disclosures contained within the sermon and protest were not reasonably made by the claimant so as to allow the information provided on those occasions to qualify as protected disclosures.

154. The tribunal now considers the claimant's complaint of automatic unfair dismissal and whether the reason or, if more than one, the principal reason for the claimant's dismissal was the protected disclosures as found. Given the tribunal's findings as to which constitute protected qualifying disclosures, the claimant is left having to show a causal link between his dismissal and the two occasions he raised a breach of a legal obligation in July 2021 and/or his message to the trustees of 29 January 2023.

155. The tribunal can very confidently conclude that the reason for his dismissal was not the 2 disclosures in July 2021. These occurred 18 months before the claimant was suspended and it is extremely unlikely that they would have been in the trustees' minds at the point of dismissal. The tribunal concludes that they certainly were not. They were not even a material influence let alone the principal reason for dismissal. Mr Arshad was asked to start his investigation, he told the tribunal, with the claimant's sermon. Nothing earlier in time was considered relevant. Mr Hussain had no live issues with the claimant's beliefs and how he was expressing them prior to the sermon and demonstration. Even then, he did value the claimant and was looking to see if the claimant had a true insight into his behaviour such that the employment relationship might, from the respondent's perspective, have been sustainable.

156. The claimant's message of 29 January 2023 is obviously much closer in point of time to the decision to terminate employment, but again, for the reasons set out in its conclusions on the claimant's complaint of discriminatory less favourable treatment, the message was not, the tribunal finds, a reason for the respondent's dismissal decision or indeed his suspension. No action was and, on the evidence, is likely to have been taken if the claimant had simply sent a message directly to the trustees and not repeated his views regarding creedal violations publicly. The evidence is not that the trustees in any event particularly registered in their minds any specific concern regarding the claimant accusing them of acting in breach of the respondent's constitution.

157. The decision to dismiss the claimant was because of the public nature of his accusation that the trustees were guilty of creedal violations in

circumstances where he was considered to have seriously disparaged them, not least in terms of the language used, and the trustees' concerns regarding the security of Irfan Shah and others. That was the principal reason for dismissal. The conduct which is said to have led to the conclusion of gross misconduct justifying dismissal is set out in 5 bullet points in the letter to the claimant of 13 April 2023. Whilst the nature of the respondent's concerns are widely expressed, there is still no reference to the claimant's accusation that the respondent was acting in breach of its constitution. The respondent was influenced in its decision to dismiss by the claimant raising, during the investigation, systemic failures of management referring to nepotism, unqualified leadership and poor education, but again no reference is made to a breach of the constitution. The respondent never turned its mind to whether the claimant might be making a protected disclosure. It certainly did not recognise that he was. Had he not raised the breach of the constitution, the tribunal is clear that his dismissal would still have resulted given the tribunal's findings as to the principal reason for the dismissal.

158. The claimant separately brings complaints of whistleblowing detriment which are easier for a claimant in the sense that all that is required is for the protected disclosures to have been a material influence on the decision makers.

159. The claimant was treated obviously to his detriment in being suspended. The reason for his suspension was, however, the same as the reason for his dismissal. Just as the tribunal has found that the claimant's religious beliefs did not materially influence his suspension, nor did his raising that the respondent was guilty of creedal violations or in breach of its constitution. The letter of suspension refers to the claimant having made several alleged slanderous remarks and accusations against another individual - a reference to Irfan Shah. It continues that this has brought into disrepute the claimant's position as imam and the respondent. Reference is made to their attention also being drawn to videos on social media containing the same. The tribunal has already considered what it was in the mind of the trustees which was concerning them. It was certainly not the claimant suggesting (in his message of 29 January 2023 or otherwise) that there had been a breach of the constitution or they were guilty of creedal violations. Far less esoteric and technical matters were in the trustees' minds at the time they decided to suspend the claimant. For the trustees, the claimant had acted inappropriately in his public pronouncements in the sermon and demonstration, in the derogatory language used and, in the potential stirring up of an adverse reaction placing Irfan Shah and others at potential risk. These are factors distinct (separable) from the claimant's disclosures and were what materially influenced the respondent in its decision to suspend the claimant.

160. As regards an unreasonable delay in conducting the disciplinary proceedings, the tribunal has already found that the reason was a combination of inexperience, absence on pilgrimage and an attempt to resolve the matter through a settlement agreement. There are no facts from which the tribunal could conclude that the respondent was to any extent whatsoever influenced by the claimant having raised a protected disclosure about creedal violations and/or their impact in terms of the respondent's constitution.

161. The tribunal's decision would have been no different, given its conclusions as to the reason for the respondent's treatment of the claimant, had the claimant been able to rely on his sermon and involvement in the demonstration as additional qualifying protected disclosures. Again, the way in which the claimant made the disclosures was the operative reason, distinct and separable from the disclosures at the sermon and demonstration in themselves.

162. The claimant's final complaint is of ordinary unfair dismissal. The tribunal concludes that the reason for dismissal was one related to conduct as already explained.

163. The tribunal considers firstly procedural matters, which it considers sufficient on their own to render dismissal, in all the circumstances, unfair. The evidence is not of Mr Hussain being the decision maker but rather the decision to dismiss having been taken collectively by the trustees. The decision was therefore made by individuals who had not been part of the investigation or disciplinary process. There were no notes produced from the disciplinary hearing for their potential consideration.

164. That collective decision was not, the tribunal finds, based upon any investigation but had been arrived at an earlier stage, prior indeed to Mr Arshad's investigation meeting with the claimant. He was not tasked with collating all relevant evidence whether in support of the allegations or exculpatory, but rather, in circumstances where the trustees had already determined that the claimant would not be returning to his position, at most, he was formulating the basis for that case. In the circumstances, he could not have been an open minded and unprejudiced investigator.

165. Mr Hussain had not viewed the full footage, readily available, of the claimant's speech at the demonstration.

166. There was no fair appeal process. Mr Sehgal told the claimant that the trustees would decide the outcome rather than himself. The letter of appeal outcome is suggestive of outside involvement. He had not considered the documentary evidence provided by the claimant, even though it was sat within his inbox. He did not consider the timeline and letter of complaint issued by the claimant and considered at the disciplinary stage. He did not review the contents of the claimant's sermon or view more than brief and partial footage of the demonstration. He relied, according to the evidence he gave to the tribunal, on vague hearsay regarding the claimant's social media comments.

167. In any event, returning to the investigation, the extent of Mr Arshad's investigation was to speak to the claimant. His investigation shows a lack of inquisitiveness or desire to gain a fuller understanding of what was said certainly in terms of either the sermon or the demonstration. Mr Arshad indicated to the claimant, following the investigation meeting, but prior to the

disciplinary hearing, that the claimant would not be allowed to return to his mosque. Mr Arshad had clearly discussed the potential outcomes in the claimant's case with Mr Hussain prior to the disciplinary hearing.

168. During the investigation, the claimant made comments critical of the respondent's trustees and their management of the organisation. Whilst these might have been reasonably considered when weighing up the claimant's insight into his actions or in evaluating the sustainability of the employer/employee relationship, they ought not reasonably to have been used as additional grounds for the termination of his employment without the claimant certainly being made aware that they effectively constituted additional allegations. Those comments clearly formed part of the reason to dismiss as set out in the outcome letter.

169. It was also clear from Mr Hussain's evidence that he was significantly influenced by the Punjabi phrases used by the claimant during the demonstration, not least his interpretation that the claimant was referring to the trustees as "bastards". There was, however, no proper objective consideration of the meaning of the phrases and the meaning which the claimant might reasonably have attributed to them. There was a lack of consideration of generational differences in the use of language, particularly between those who had been born/grown up in India/Pakistan speaking Punjabi and those for whom English was their primary language from an early age. Those potential differences were ones Mr Hussain certainly ought reasonably to have been aware of. He unreasonably attributed his own worst case meaning to the phrases used, indeed without consideration of how their use had been explored during Mr Arshad's investigation meeting.

170. The claimant was unfairly dismissed.

171. There should be no uplift in compensation to reflect any unreasonable failure of the respondent to comply with the ACAS Code of Practice on Disciplinary Procedures. The claimant has referred to an inadequate investigation and the need to give employees an opportunity to state their case. The investigation was defective, but the claimant's conduct was investigated – he was questioned on it. He had a chance to explain his behaviour at each stage of the internal process. There were reasons for the delay in progressing with the disciplinary case.

172. In circumstances where the tribunal cannot evaluate the decision which would have been reached as to sanction had a fair process been followed and where the decision to dismiss was in essence predetermined, it would be improper for the tribunal to embark on the degree of speculation inevitably required in assessing with what degree of certainty, had the respondent acted fairly, the claimant would have been dismissed in any event.

173. However, the tribunal considers the issue of the claimant's conduct as contributing to the decision to terminate his employment and as conduct prior

to dismissal in the context of any basic award entitlement. Certainly, the claimant was guilty of blameworthy conduct and recognised, at least to some extent during internal process, that he could have done things better. The claimant's protestations that he was not indulging in anything which might be considered as hate speech is considered by the tribunal to be naïve. The claimant was effectively calling Irfan Shah a Shia and to do so publicly created a foreseeable risk of influencing others to attack him, including potentially physically. Further, whilst the Punjabi phrases used by the claimant were not intended to possess the meaning attributed to them by Mr Hussain, they were disrespectful and derogatory in circumstances where the claimant ought reasonably to have been aware that they would seriously damage the relationship with his employer.

174. On the other hand, whilst the claimant was guilty of misconduct, the tribunal accepts that the respondent would not have dismissed him (or would at least have been open to retaining him in some role) if the claimant had been fully appreciative of the inappropriateness of his behaviour and had provided some form of reassurance regarding his continued conduct. Also, had the respondent had proper policies and procedures in place and clear parameters as to how and in what context imams could permissibly express their religious beliefs, the claimant would have been clearer as to the expectations of him in his position of imam. The respondent had tolerated much in terms of criticism of Irfan Shah. It did not object to very wide publication of religious views through social media including YouTube. It had effectively allowed the situation to develop where a line, which was not always likely to be clear, might be overstepped.

175. In all the circumstances the tribunal considers that the claimant's basic and compensatory award ought to be reduced by a factor of 50% to reflect his conduct prior to dismissal. This is reflective of the claimant bearing neither the substantial nor only a lesser part of the blame for his own dismissal.

176. Compensation will be determined at a subsequent remedy hearing if the parties are unable to reach an agreement. The tribunal would note that the claimant has expressed previously a desire to be reinstated and would note that the legal authorities suggest that an employee contributing to his or her dismissal by blameworthy conduct is a factor to consider in determining whether reinstatement is practicable. The tribunal also notes that the claimant was never provided with a written statement of terms of employment and that an additional remedy will fall to be considered for that reason.

Employment Judge Maidment

Date 21 August 2024

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